HAJI IBRAHIM & ORS. v. PATEL

[O.C.J. (Wan Mohamed J.) January 31, 1983 & February 28, 1983]
[Kota Kinabalu – Civil Suit No. 221 of 1980]

Landlord & Tenant – Sub-lease for 5 years – Claim for possession against tenant – Non-registration of Memorandum of Sub-lease under provisions of Sabah Land Ordinance (Cap. 68) – Effect of – Tenant was not statutory tenant under the protection of the Rent Control (Business Premises) Enactment 1965 – Court allowing plaintiffs possession under ordinary contractual or tenancy dispute – Sabah Land Ordinance (Cap. 68), s. 104 – Rent Control (Business Premises) Enactment, 1965, s. 2(2).

The plaintiffs were the co-owners of the business premises in question while the defendant was the tenant. The defendant had since April 1969 been a tenant of the premises under successive sub-leases and the last Memorandum of Sub-lease was dated May 21, 1977. The sub-lease was for a period of five years commencing from July 1, 1975 and expiring on June 30, 1980.

The 2nd and 3rd plaintiffs before the expiration of the above-mentioned sub-lease caused a notice to be served on the defendant to vacate the premises on or before August 31, 1979; and they later caused another notice to be given to the defendant asking the defendant to vacate the premises on the date of the expiration of the sub-lease, i.e. June 30, 1980. The 2nd and 3rd plaintiffs stated that they would not agree to allow the defendant to exercise his option to have the lease extended on the ground that the sub-lease was only signed by the 1st plaintiff who owned only one-third share of the premises and that the 2nd and 3rd plaintiffs who owned the remaining two-thirds share did not consent to such sub-lease being entered into between the 1st plaintiff and the defendant.

The Memorandum of Sub-lease was not registered under the provisions of the Sabah Land Ordinance (Cap. 68). While the plaintiffs alleged that the defendant had no interest in the premises in question due to non-registration of the sub-lease, the defendant contended that he had become a statutory tenant for the same for non-registration of the Memorandum of Sub-lease and that he had been in occupation and paying the rent of $1,100 per month until June 30, 1980.

The issues posed before the court were:

(a) was the defendant a statutory tenant under the protection of the Rent Control (Business Premises) Enactment, 1966?

(b) if the defendant was a statutory tenant, had the court jurisdiction to grant an order for possession to the plaintiffs under the said Enactment?

(c) if the defendant was not a statutory tenant, had the court jurisdiction to grant an order of possession in respect of the premises in question to the plaintiffs?

Held: (1) the non-registration of the Memorandum of Sub-lease under the provisions of the Land Ordinance did not change the status of the defendant from "a tenant by agreement" into "a statutory tenant". As such, the defendant was not protected by the Rent Control (Business Premises) Enactment 1965;

(2) by virtue of Clause 5 of the tenancy, it was incumbent upon the plaintiffs to allow the defendant to exercise the option to renew the tenancy for a further period of 5 years. Since it was agreed in the Statement of Facts that the 2nd and 3rd plaintiffs conceded to the fact that the 1st plaintiff had the authority to sign the said Memorandum of Sub-lease, the 2nd and 3rd plaintiffs' notice to the defendant to quit the premises should also be taken as withdrawn and of no effect;

(3) in answer to the issue (c) posed, the answer would be in the affirmative. The power and jurisdiction of the court in making such an order is not under the Control of Rent (Business Premises) Enactment but under an ordinary contractual or tenancy dispute.

CIVIL SUIT.

Miss Juliana Yap for the plaintiffs.
John Kah for the defendant.

Cur. Adv. Vult.

Wan Mohamed J.: The plaintiffs are the co-owners of the business premises in question while the defendant is the tenant. The defendant has since April 1969 been a tenant of the premises under successive sub-leases and the last Memorandum of Sub-leases was dated May 21, 1977. The sub-lease was for a period of five years commencing from July 1, 1975 and expiring on June 30, 1980.

The 2nd and 3rd plaintiffs before the expiration of the abovementioned sub-lease caused a notice to be served on the defendant to vacate the premises on or before August 31, 1979; and they later caused another notice to be given to the defendant asking the defendant to vacate the premises on the date of the expiration of the sub-lease, i.e. June 30, 1980, and stated that they would not agree to allow the defendant to exercise his option to have the lease extended on the ground that the sub-lease was only signed by the 1st plaintiff who owned only one-third share of the premises and that 2nd and 3rd plaintiffs who owned the remaining two-thirds share did not consent to such sub-lease being entered into between the 1st plaintiff and the defendant.

The Memorandum of Sub-lease was not registered under the provisions of the Sabah Land Ordinance (Cap. 68). While the plaintiffs allege that the defendant had no interest in the premises in question due to non-registration of the sub-lease, the defendant contends that he had become a statutory tenant for the same for non-registration of the Memorandum of Sub-lease and that he had been in occupation and paying the rent of $1,100 per month until June 30, 1980.

Instead of adducing evidence and going into a laborious trial of this case the parties had agreed to the following statement of facts and narrowed down the issues to be determined by the Court:-

"AGREED STATEMENT OF FACTS

1. The Plaintiffs are the registered owners of the shophouse known as No. 83, Jalan Bahasa, Labuan (hereinafter referred to as "the shophouse").
2. The Shophouse is leased to the Defendant since April 1969 under successive sub-leases and the last Memorandum of Sub-lease was dated the 21st day of May 1977 and expired on the 30th June 1980 which was signed between the 1st Plaintiff and the Defendant.
3. It is now conceded by the 2nd and 3rd Plaintiffs that the 1st Plaintiff had the authority to sign the said Memorandum of Sub-lease on their behalf.
4. The said Memorandum of Sub-lease has never been registered in accordance with the provisions of the Land Ordinance, Cap. 68.
5. The monthly rent payable under the said Memorandum of Sub-lease was M$1,100.00 and was paid to the Plaintiffs up to 30th June 1980 after which date the Plaintiffs had refused to accept any rents from the Defendant.
6. The 2nd and the 3rd Plaintiffs had given a notice to the Defendant to vacate the shophouse within one year from the date of the letter giving the said notice, that is, the 1st September, 1978.
7. The Defendant had been using the ground floor of the shophouse for his retail business.

MATTERS IN ISSUE WHICH THE COURT IS ASKED TO DECIDE

1. Is the Defendant a statutory tenant under the protection of the Rent Control (Business Premises) Enactment, 1966?
2. If the Defendant is a statutory tenant, has the Court jurisdiction to grant possession order to the Plaintiffs under the said Enactment?
3. If the Defendant is not a statutory tenant, has the Court jurisdiction to grant an order of possession in respect of the premises in question to the Plaintiffs?"

The Court is therefore to decide or make a ruling as to the effect of the non-registration of the Memorandum of Sub-lease under the provisions of the Sabah Land Ordinance (Cap.68.) taking also into consideration that a rental of $1,100 per month was paid by the defendant and accepted by the plaintiffs until June 30, 1980.

Both parties put in written submissions. Counsel for plaintiffs refers to section 2(2) of the Control of Rent (Business Premises) Enactment 1965 which reads:

"Nothing in this Enactment shall apply to any tenancy in which the State is the landlord, or to *any tenancy* for a term certain of three years or upwards where the tenancy agreement contains no provision for the earlier determination of the same other than for a breach of the said agreement."

(the emphasis is mine)

Under section 2(1) of the Enactment, the definition or interpretation of the word "tenancy" reads:

"'tenancy' means any lease, demise, letting or holding of premises, whether oral or in writing, by virtue whereof the relationship of landlord and tenant is created;"

By virtue of the Memorandum of Sub-lease (see pages 9 to 12 in the Agreed Bundle of Documents) a tenancy is created and the relationship of landlord and tenant came into existence within the meaning and definition of the Rent Control (Business Premises) Enactment. The fact that the Sub-lease was not registered although void under the Land Enactment of Sabah, in my opinion, does not affect the validity of the tenancy. This is so because tenancy can also be created by oral agreement between the landlord and the tenant. I am sure it is wrong to suggest that even an oral agreement is required to be registered. Since the Rent Control (Business Premises) Enactment accepts or recognises a tenancy by oral agreement it is but proper to presume that a tenancy created by a Memorandum of Sub-lease which is not registered is a tenancy within the definition of the Rent Control (Business Premises) Enactment. The tenancy created by virtue of the Agreement in the Memorandum of Sub-lease is for a period of five years. Therefore the tenant is not protected by the Enactment by virtue of Section 2(2) of the Enactment. I therefore hold that the Memorandum of Sub-lease referred to above, although not registered under the provision of section 104 of the Sabah Land Ordinance, is a valid tenancy agreement which binds both parties – the plaintiffs as the landlords and the defendant as the tenant. The non-registration of the Memorandum of Sub-lease under the provisions of the Land Ordinance does not in my opinion change the status of the defendant from "a tenant by agreement" into "a statutory tenant". As such the defendant is not protected by the Rent Control (Business Premises) Enactment, 1965.

Having held that the Memorandum of Sub-lease is a valid tenancy agreement which binds the plaintiffs and the defendant, both parties are obliged to comply with the terms therein.

The tenancy according to the above document expired on June 30, 1980 and by virtue of Clause 5 of the same, it is incumbent upon the plaintiffs (the owners of the premises) to allow the defendant to exercise the option to renew the tenancy for a further period of five years. The intention of the defendant to do so was known to the plaintiffs. Since it was agreed in the Statement of Facts that the 2nd and 3rd plaintiffs concede to the fact that the 1st plaintiff had the authority to sign the said memorandum of Sub-lease, their (2nd and 3rd plaintiffs') notice to the defendant to quit the premises is also taken as withdrawn and of no effect.

The monthly rental payable by the defendant to the plaintiffs during the extended period July 1, 1980 to June 30, 1985 shall be as provided by the same Clause 5 of the Memorandum of Sublease which reads:

"And Provided that, upon such renewal, the monthly rent may be subject to review on the basis of a similar letting of similar premises in the same locality; and, in the event of the parties hereto failing to agree on the amount, the matter shall be referred to the Labuan Tenancy Tribunal for adjudication."

Referring to the matters in issue to be decided by the Court, I hold that defendant is not a statutory tenant under the protection of the Rent Control (Business Premises) Enactment, 1965. Since the answer to the first matter or point is in the negative, the second point has no application and requires no answer. To the third point or matter in issue – having decided that the defendant is not a statutory tenant, whether the Court has jurisdiction to grant an order of possession in respect of the premises in question to the plaintiffs, my reply is in the affirmative. Here I must make it clear that the power and jurisdiction of the Court in making such an order is not under the Control of Rent (Business Premises) Enactment but under an ordinary contractual or tenancy dispute.

In the above premises, I make the following orders:–

(1) The defendant to vacate and surrender the demised premises to the plaintiffs on or before June 30, 1985 and the plaintiffs shall have vacant possession of the premises on July 1, 1985;

(2) The monthly rental of the demised premises for the extended period of tenancy, i.e. from July 1, 1980 to June 30, 1985 shall be as provided by Clause 5 of the Memorandum of Sublease dated May 21, 1977;

(3) No cost.

Order accordingly.

Solicitors: *Rayner & Co.; Jayasuriya Kah & Co.*

LOURDENADIN v. RATNAVALE & ANOR.

[O.C.J. (Vohrah J.) October 20, 1983]

[Kuala Lumpur – Civil Suit No. 1166 of 1974]

Land Law – Private caveat – Removal of – Caveator must have notice of application to remove caveat before removal can be considered extinguished and extinction final and irrevocable.

In this case by a written agreement executed on July 14, 1972 between the plaintiff and the first defendant, the plaintiff agreed to buy and the first defendant agreed to sell the land, subject to the approval of the Ruler-in-Council being obtained for extension of time within which to erect a building on the land. Subsequently there ensued a series of correspondence between the first defendant's solicitors and the plaintiff's solicitors. The first defendant's solicitors alleged that the first agreement had been terminated with effect from July 23, 1973 but this alleged termination was declared wrongful by the plaintiff's solicitors on November 14, 1973. On September 9, 1973 the first defendant entered into another agreement with the second defendant, her brother-in-law ("the second agreement"), to sell the land to him. On September 20, 1974 the plaintiff filed a claim against the first defendant for specific performance of the first agreement. On June 28, 1978 the plaintiff made an application for the entry of a private caveat against the registered document of title to the land. On March 10, 1982 she applied for and on April 21, 1982 she successfully obtained an order to amend the statement of claim adding the second defendant as a party to the suit, alleging fraud against both the defendants in respect of the sale and transfer of the land to the second defendant and praying, *inter alia*, for the cancellation of the memorial entered on the registered document of title whereby the proprietorship of the land was transferred to the second defendant. In February 1983, the second defendant applied to the Registrar of Titles for the removal of the plaintiff's caveat. The removal was effected on June 9, 1983 following the gazetting of a notice of intended removal of the caveat after attempts at personal service of the notice had been unsuccessfully made at the plaintiff's previous address given in her said application for the private caveat. On August 16, 1983 the plaintiff entered a second caveat upon the land. The second defendant applied to have the second caveat removed.

The pre-emptive question before the court was, "Does the removal *per se* of the private caveat in respect of the